Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Streamlining Deployment of Small Cell Infrastructure By Improving Wireless Facilities Siting Policies	)	WT Docket No. 16-421
	)	
Mobilitie, LLC Petition for Declaratory Ruling	)	

REPLY COMMENTS OF T-MOBILE USA, INC.

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T-Mobile USA, Inc. ("T-Mobile")[1] respectfully submits these reply comments in response to the Wireless Telecommunications Bureau's *Notice* in this proceeding.[2]

INTRODUCTION AND SUMMARY

The robust record compiled in response to the *Notice* amply documents the deployment barriers providers encounter every day in jurisdictions across the country as they seek to densify their networks and meet exploding consumer demand. The list is long, and includes excessive fees, needless delays, preferences for or against city-owned property, moratoria (both actual and de facto), discriminatory treatment of wireless carriers compared to wireline or other utilities, and discretionary denials. While some progress is being made in select areas, it is often the

[1] T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

[2] *See Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling*, Public Notice, 31 FCC Rcd 13360 (WTB 2016) ("*Notice*"); *see also Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling*, Order, 32 FCC Rcd 335 (2017) (extending comment and reply comment deadlines).

result of protracted litigation.[3] Given the Commission's mandate to encourage deployment *everywhere* and to *all* Americans, the FCC must do its part to remove barriers that risk widening the gap between broadband haves and have-nots.

A diverse group of commenters—ranging from carriers and infrastructure providers to trade groups, business interests, and public interest groups—agree targeted FCC action is needed to streamline and expedite infrastructure siting necessary to support next generation deployments. The record demonstrates that the FCC should:

- ***Ensure that application fees and right-of-way ("ROW") use charges are cost-based***. Numerous commenters agree with T-Mobile that the FCC should limit fees charged to process small cell and other wireless facility applications and for the use of public ROWs to actual processing and ROW management costs.

- ***Clarify what is an effective prohibition for purposes of Sections 253 and 332***. The FCC should make clear that a regulation effectively prohibits service contrary to Section 253 if it "materially inhibits or limits" the ability of any competitor to compete, or creates a "substantial barrier" to or otherwise impedes the provision of any telecommunication service. All forms of moratoria, onerous application processes, and unfettered discretion to deny an application should be declared effective prohibitions under these standards. With respect to Section 332, commenters agree that old coverage gap tests are no longer meaningful or workable in a capacity driven world, and the FCC should declare that the regulation of need, technology, coverage/capacity, least intrusive means, or other business issues violate Section 332.

- ***Accelerate the Section 332 shot clocks and add a deemed granted remedy***. The record includes strong support to further accelerate the Section 332 shot clocks to no more than 60 days for collocations and no more than 90 days for new sites, and to apply these shot clocks to all aspects of approval. Commenters recognize that the FCC also must add a "deemed granted" remedy to make the shot clocks meaningful (litigation alone is not a viable strategy solution in light of the large numbers of expected deployments).

[3] For example, as Crown notes, the Town of Hempstead, NY has a wireless ordinance that has been the subject of pending litigation in federal court for more than six years, and a motion for summary judgment—asserting that the ordinance constitutes a prohibition and violates a variety of provisions of the Communications Act—has been fully briefed and awaiting decision for almost two years. *See* Crown Castle International Corp. Comments, WT Dkt. No. 16-421, at 19 n.17 (Mar. 8, 2017) ("Crown") (citing *New York SMSA P'ship v. Town of Hempstead*, 2:10-cv-4997 (E.D.N.Y.)).

- ***Clarify Section 253 applies to wireless and prevents discriminatory treatment***. The record supports clarification by the Commission that Section 253's protections extend to wireless services, and prevent discriminatory treatment of wireless compared to wireline and other deployments.

- ***Clarify Sections 253/332 apply to requests to site facilities on muni poles and ROWs***. Commenters agree the FCC should clarify that access to municipal poles and ROWs is not a proprietary function.

- ***Eliminate or streamline unnecessary environmental, preservation, and tribal reviews***. The record also supports FCC action to develop broader exclusions that exempt small wireless installations from historic preservation reviews, eliminate unnecessary floodplain reviews, improve the tribal review process, and exclude collocations on twilight towers from historic preservation review.

- ***Take additional immediate steps to facilitate wireless deployments***. Commenters also urge the FCC to work to speed deployment of broadband on federal lands, clarify that utility-owned light poles fall within the scope of Section 224, and help educate states and localities on existing federal laws and the deployment challenges faced by carriers.

The record confirms the Commission has ample authority to take these actions. It is well settled that agencies are authorized to interpret ambiguous provisions in the statutes they administer, and FCC action to interpret ambiguities in Sections 253 and 332 has already been recognized and upheld by the courts. The FCC also has broad discretion as to how it conducts its proceedings, and need not engage in notice-and-comment rulemaking to alter its interpretation of a statutory term.

Many of the claims that the FCC lacks authority to act are rooted in misplaced concerns about the scope of the relief requested. Providers are not asking the FCC to set standard fees or to prohibit compensation—just clarify when a fee is reasonable, nondiscriminatory, and not an effective prohibition. Nor are providers asking the FCC to adopt sweeping, prescriptive mandates—just develop guardrails to better guide the application of statutory protections and remove barriers to deployment. And providers are not asking the FCC to preempt safety and welfare standards—just ensure those standards are clearly defined and fairly and consistently applied. This targeted relief falls well within the scope of the Commission's authority.

As a consequence, arguments by localities that FCC action here is contrary to precedent or the Constitution, or is otherwise unlawful, lack merit. To the contrary, affording localities the unfettered discretion they seek to set fees and charges would thwart the procompetitive mandate in Sections 253 and 332 and undermine the goals of both statutes. And the requested guardrails will not compromise the ability of localities to review applications and address legitimate safety and welfare concerns, as long as they do so pursuant to clear, objective standards that are applied on a nondiscriminatory basis and do not have the effect of prohibiting service.

DISCUSSION

I. THE RECORD DEMONSTRATES THAT SYSTEMIC BARRIERS TO DEPLOYMENT EXIST.

The record is replete with evidence documenting the different types of deployment barriers faced by T-Mobile and other wireless and infrastructure providers as they seek to upgrade networks and meet consumer demand for new advanced services, like 5G. These barriers include excessive fees, needless delays, preferences for or against city-owned property, moratoria (both actual and *de facto*), discriminatory treatment of wireless carriers compared to wireline or other utilities, and discretionary denials and other barriers.

Excessive fees. Many local governments impose exorbitant one-time application fees, consultant fees, annual recurring fees, franchise or use fees, and/or gross revenue fees which are unreasonable and unrelated to actual cost recovery. One-time fees can range up to many tens-of-thousands of dollars per application, while annual use fees can range up to tens-of-thousands of dollars per site.[4] As the Competitive Carriers Association ("CCA") notes, these excessive and

[4] Sprint Corporation Comments, WT Dkt. No. 16-421, at 24 (Mar. 8, 2017) ("Sprint").

unfair fees are "a nationwide issue" that are "stalling broadband deployment."[5] Examples include:

- A western city imposes a $9,500 per site application fee, while a nearby community charges only $350 per application and $742 per year. As a result, "residents of the jurisdiction with lower fees and a streamlined process are now enjoying the increased coverage and speed benefits of more than 100 small cells with hundreds more already approved, while mobile users in the high-fee areas of the jurisdiction next door continue to wait."[6]
- A northeastern city charges a one-time administration fee of $50,000 for the right to locate cells in the ROW, in addition to per-cell fees.[7]
- Montgomery County, MD includes some of the highest application fees in the country—more than $20,000 for each new small cell node pole installed in a public ROW.[8]
- A large southern city assesses a $5,000 one-time application fee *and* 5% of gross revenues *and* an annual fee of $1,300 per pole or $700 per attachment.[9]
- Three cities in California assess annual fees ranging from $2,600 to $8,000 for each attachment on a municipal-owned pole, while a city in Missouri and a city in Texas assess an annual fee of $2,000 per attachment. By comparison, utility pole attachment rates subject to the FCC's Section 224 regulations are less than $50 a year.[10]
- A wireless ordinance in Newport Beach, CA recommends a $10,800 per node baseline annual rent, which is more than 50 times the average FCC wireless pole attachment rate.[11]
- Several Massachusetts state agencies charge per pole attachment fees ranging between $1,500 per pole to $3,500 per pole. These fees appear to have no purpose other than to generate revenue.[12]
- A locality in Washington charges an annual ROW usage fee of $10,000 per facility, while Arizona municipalities typically charge annual fees ranging between $3,000 to $4,000 per-node.[13]

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[5] Competitive Carriers Association Comments, WT Dkt. No. 16-421, at 15 (Mar. 8, 2017) ("CCA").

[6] Sprint at ii-iii.

[7] *Id*. at 25.

[8] Crown at 12-13.

[9] Sprint at 25.

[10] AT&T Comments, WT Dkt. No. 16-421, at 18-19 (Mar. 8, 2017) ("AT&T").

[11] Crown at 11.

[12] *Id*. at 12.

[13] AT&T at 18.

- Several New York municipalities require excessive escrow fees in addition to other charges. Hempstead, NY, for example, requires an escrow fee of $3,000 per new small cell node pole and $1,000 per collocation for consultant review, resulting in escrow fees of $150,000 or more for a typical network deployment. This in addition to an annual "voluntary" 5% gross revenue share for the Town.[14]
- Many other northeast suburban towns also assess franchise fees of 5% of revenues for access to ROW,[15] while numerous western localities demand gross revenue or franchise fees ranging from 3.5% to 7%.[16]
- A city in New York requires a $30,000 per year flat "administrative fee," plus a payment of $708 per node per year.[17]
- One southern state Department of Transportation ("DOT") is demanding $24,000 per year for a single new ROW pole, which is more than the revenue the pole would generate from the provider's customers.[18] The same DOT charges the electric utility $0 for each of its poles in the ROW.[19] A western DOT charges $40,000 per year for macro cells in urban environments, and $10,000 per year for small cells in urban environments.[20] And two northeastern state DOTs assess annual fees for wireless attachments in the ROW of $9,000 and $37,000, respectively, which do not apply to attachments by non-wireless utilities.[21]

Unnecessary delays. Providers continue to encounter significant delays despite the FCC's shot clocks, and the record confirms that litigation is rarely a viable option.[22] As AT&T explains, "such suits are sparingly used because they damage the relationship between providers

[14] Crown at 13.

[15] Verizon Comments, WT Dkt. No. 16-421, App. A at 2 (Mar. 8, 2017) ("Verizon").

[16] Sprint at 27.

[17] ExteNet Systems, Inc. Comments, WT Dkt. No. 16-421, at 10 (Mar. 8, 2017) ("ExteNet").

[18] ExteNet at 10; Crown at 13.

[19] ExteNet at 10 n.10.

[20] Sprint at 26.

[21] Verizon at 9.

[22] *See, e.g.*, Lightower Fiber Networks Comments, WT Dkt. 16-421, at 5 (Mar. 8, 2017) ("Lightower") ("Given the significant amount of time, resources and expense associated with litigating even one federal lawsuit, it is neither practical nor an efficient use of time for Lightower to litigate against each and every jurisdiction …. Having to bring suit in every such case would … effectively prohibit Lightower from providing telecommunications service."); Sprint at 18 ("Litigation in federal court … directly undermines the ability of carriers to engage in negotiation of a reasonable implementing policy.").

and municipalities, are expensive, lead to unpredictable delays, and are not practically scalable for deployments with more than a few nodes."[23] Delays faced by providers range from knowing shot clock violations to efforts to avoid triggering the shot clocks by imposing lengthy "pre-application" procedures:

- Greenwood Village, CO has a lengthy pre-application process for all small cell installations—including notification to all nearby households, a public meeting, and preparation of a report—which the city contends does not trigger the shot clock.[24] Irvine, CA has a similarly burdensome process.[25]
- Most jurisdictions require master lease or license agreements ("MLAs"), which can take years to negotiate, before allowing facilities in their ROWs. In one Midwestern community, it took more than three years to reach an MLA.[26]
- According to one provider, 70% of its applications to deploy small wireless facilities in the public ROW in the last two years exceeded the 90-day shot clock, and 47% exceeded the 150-day shot clock that applies to new towers.[27]
- Another provider reports that approximately 46 jurisdictions it works with have exceeded the 150-day shot clock.[28]
- T-Mobile has experienced similar delays: roughly 30% of all recently proposed T-Mobile sites (including small cells) involve cases where the locality fails to act in violation of the shot clocks.[29]
- In many communities—nearly 43% based on one provider's experience—delays are caused by the lack of a clear process to handle the deployment of distributed small cell networks in public ROWs.[30]

Municipal infrastructure. The record confirms that access to and use of municipal poles and ROWs is a growing concern. In some areas, localities are requiring the use of municipal infrastructure to the exclusion of other siting options, while in other areas cities are making it

[23] AT&T at 15 n.25.

[24] Crown at 16.

[25] *Id*. at 21.

[26] Verizon at 7-8.

[27] The Wireless Infrastructure Association Comments, WT Dkt. No. 16-421, at 5 (Mar. 8, 2017) ("WIA").

[28] Lightower at 4.

[29] T-Mobile USA, Inc. Comments, WT Dkt. No. 16-421, at 8 (Mar. 8, 2017) ("T-Mobile").

[30] ExteNet at 9.

difficult or refusing access to their infrastructure and ROWs—or leveraging the situation (often through the use of consultants) to garner monopoly rents.[31]

- A locality in Illinois is requiring attachments to city-owned poles, at the provider's cost, in exchange for the right to install new poles.[32]
- A northeastern suburb denied a proposed pole and directed the carrier to deploy small facilities on town-owned light poles to fill the coverage gap.[33]
- Two jurisdictions in Oregon require submission of an alternative site analysis demonstrating why small cells cannot be located on private property before considering use of municipal infrastructure.[34]
- Municipalities in Texas,[35] Massachusetts,[36] and Michigan[37] have refused requests to place small cell infrastructure in their ROWs.
- Redwood, CA does not permit the installation of any wireless facilities on city-owned poles or ROWs.[38] Similarly, Cambridge, MA does not allow attachments on city-owned poles or the installation of new poles,[39] and the installation of new structures in public ROWs is prohibited in Tysons Corner, VA.[40]
- Numerous cities in Minnesota have agreements with a consultant, pursuant to which the consultant is compensated based on the rent charged—the higher the rent charged to the infrastructure provider, the higher the consultant's compensation.[41]

Moratoria (both actual and de facto). Although moratoria do not toll the shot clocks, localities continue to adopt them. Indeed, the record demonstrates that "moratoria are a frequent, frustrating obstacle for competitive carriers seeking to deploy consumer demanded next-

[31] WIA at 20.

[32] T-Mobile at 8.

[33] Verizon, App. A at 1.

[34] Mobilitie at 13.

[35] AT&T at 7-8.

[36] *Id*. at 7-8.

[37] Mobilitie at 11.

[38] Crown at 15.

[39] *Id*. at 17.

[40] *Id*. at 18.

[41] WIA at 20.

generation services."[42] Localities also simply fail to act on applications (in some cases while they develop small cell policies) or impose restrictions that result in *de facto* moratoria. For example:

- In Florida, wireless siting moratoria have been in place in one municipality for over two years,[43] and two others since September 2016.[44]
- Localities in Iowa, California, and Minnesota issued indefinite moratoria in August 2016 prohibiting new wireless and/or small cell facilities.[45]
- Nearly 30 localities in California have refused to negotiate ROW access agreements pending the acquisition of street lights from a privately-owned investor utility.[46]
- At least three states have refused requests to place small cell infrastructure in ROWs under their control.[47]
- A California community requires all facilities to be located underground, and thus does not allow even small cells attached to existing poles.[48] Two Michigan localities also have underground ordinances that effectively prohibit small cell deployments,[49] and several municipalities in Texas and Kansas similarly prohibit above ground wireless facilities.[50]
- Local governments in Florida, Texas, Indiana, and Kansas have imposed minimum separation distances ranging between 100 to 1,000 feet between small cell facilities deployed in the ROW.[51]
- The Alabama DOT does not permit the installation of small cells in state-controlled ROW.[52] Likewise, the Delaware DOT will not issue ROW permits for facilities that will use cellular technology.[53]
- In one jurisdiction outside Indianapolis, small cell ROW applications have been pending for nearly three years, but the jurisdiction will neither approve nor deny the applications.[54]

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[42] CCA at 31-32.

[43] AT&T at 7.

[44] Mobilitie at 10.

[45] *Id*. at 11.

[46] *Id*.

[47] AT&T at 7-8.

[48] Mobilitie at 12.

[49] *Id*. at 13.

[50] AT&T at 8.

[51] *Id*.

[52] Crown at 15.

[53] *Id*. at 16.

Discriminatory treatment. The record confirms that localities engage in discriminatory conduct, contrary to Sections 253 and 332. As CTIA explains, such conduct impedes new entry into the market and the competition that comes with it, and deters the use of beneficial wireless technologies by forcing wireless providers to pay more than landline carriers and subjecting them to additional requirements in order to secure ROW access.[55] Examples include:

- According to one provider, nearly 50 communities where it sought to deploy subjected it to different standards and processes compared to other entities deploying facilities on poles in the public ROWs—even though those other users deployed similarly-sized (or larger) facilities.[56]
- San Francisco, CA requires wireless ROW deployments to undergo pre-deployment aesthetic review not required for other often more conspicuous ROW deployments.[57]
- Mercer Island, WA requires applicants wishing to install small cells in residential ROWs to obtain consent from adjacent property owners, but other utilities operating in the same ROWs are not subject to such a requirement.[58]
- A mid-Atlantic city has an exclusive contract with one provider that prevents it from approving new poles or attachments from other providers on city-owned infrastructure. Other providers there can only attach to existing third-party-owned infrastructure.[59]
- A Minnesota city is demanding annual fees of $7,500-$8,500 per pole from one provider—up to fourteen times higher than a $600 per pole annual fee it negotiated with another provider several years earlier. These new fees well exceed the Commission's cost-based pole attachment rates.[60]

Discretionary denials and other barriers. Finally, many localities impose on small cell and ROW deployments requirements designed for macro installations like towers. These requirements—which effectively prohibit new infrastructure—range from the use of

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[54] Lightower at 11.

[55] CTIA Comments, WT Dkt. No. 16-421, at 16-17 (Mar. 8, 2017) ("CTIA").

[56] ExteNet at 9.

[57] Crown at 15. Litigation concerning the ordinance is now entering its seventh year and is currently pending before the California Supreme Court. *See* T-Mobile at 2-3 & nn.4-5.

[58] Crown at 19.

[59] Sprint at 20.

[60] CTIA at 16; WIA at 21.

discretionary zoning procedures to demonstrations of need to fill a coverage gap. Yet, as Mobilitie explains, "small cells are not intended to fill geographic gaps, but to fill 'capacity gaps' where the available bandwidth is or will soon be inadequate to accommodate the exploding volume of traffic and the fast speeds customers expect."[61] As a result, "[t]he old legal tests and coverage gaps simply no longer apply in a capacity-driven wireless world."[62] For example:

- As many as half of all communities impose some kind of zoning process on the siting of small wireless facilities in the ROWs.[63] The zoning proceedings are complex and time-consuming, involving "multiple layers of discretionary review and public comment."[64] They are also discriminatory because they do not apply to facilities installed by wireline, cable, or utilities in the ROW,[65] and discretionary, allowing for denials based on issues as vague as "the public interest" or "compatibility" with the character of the area.[66]
- A Midwest suburb requires full zoning review for ROW attachments, while a northeast town required a full zoning proceeding for a screened rooftop small cell (approval took almost one year).[67] Several mid-Atlantic and southern cities also require small facility attachments to undergo the same zoning review as a new tower.[68]
- Applying macro zoning rules to small cells can produce absurd results. In one Pennsylvania community, a provider had to seek a variance from the requirement (clearly meant to apply to towers) to put an eight-foot fence around a small wireless attachment on a utility pole in a ROW.[69]
- Nearly 40 California localities require the submission of propagation maps to demonstrate additional wireless infrastructure is needed to fill a coverage gap, as do two cities in Illinois, five jurisdictions in Minnesota, and two jurisdictions in Ohio.[70]
- Several jurisdictions in Washington require small cell ROW applicants to demonstrate a significant gap in coverage, explain why using the ROW is the least intrusive means to fill that gap, and/or analyze the feasibility of alternative sites not in the ROW.[71]

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[61] Mobilitie at 12.

[62] Sprint at 16.

[63] WIA at 7.

[64] *Id*. at 8.

[65] *Id*. at 10.

[66] *Id*. at 9.

[67] Verizon, App. A at 4.

[68] *Id*., App. A at 5.

[69] WIA at 9-10.

[70] Mobilitie at 13.

- A county in the mid-Atlantic requires applicants to "provide proof" of the need to upgrade coverage or capacity. A consortium of cities in another state has proposed a model ordinance that contains a similar provision.[72]

Together, this and other evidence in the record[73] rebuts claims by states/localities that no action is needed or voluntary efforts/best practices alone will suffice. Indeed, as WIA notes, "[e]ven in jurisdictions where state legislation has been enacted to streamline the process and limit local government authority over small wireless facilities, some local governments have responded by enacting moratoria while they 'study the effect' of such legislation on their authority."[74] While T-Mobile applauds the positive steps taken or under consideration in some states and localities, FCC action is thus essential to set a nationwide baseline that avoids piecemeal steps forward limited only to certain areas.[75]

II. THERE IS BROAD-BASED SUPPORT FOR THE FCC TO FURTHER INTERPRET AND CLARIFY SECTIONS 253 AND 332 OF THE ACT.

A. Numerous Commenters Agree the FCC Should Take Specific, Targeted Steps to Remove Siting Barriers and Speed Deployment.

Carriers,[76] infrastructure providers,[77] trade groups,[78] business interests,[79] and public interest groups[80] all support FCC action to remove siting barriers and speed deployment. They

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[71] Mobilitie at 13.

[72] Sprint at 22.

[73] Verizon, for example, includes an appendix containing six pages of specific examples of the siting challenges it has encountered. *See* Verizon, App. A.

[74] WIA at 17.

[75] *See, e.g.*, Lightower at 13-14.

[76] *See, e.g.*, AT&T; Sprint; T-Mobile; Verizon.

[77] *See, e.g.*, Crown; ExteNet; Lightower; Mobilitie.

[78] *See, e.g.*, CCA; CTIA; Mobile Future; WIA.

[79] *See, e.g.*, U.S. Chamber of Commerce Comments, WT Dkt. No. 16-421 (Mar. 8, 2017) ("U.S. Chamber of Commerce").

recognize that delivery on the promise of 5G will require the deployment of dense wireless networks and countless new small cells, but legacy federal, state, and local siting requirements largely adopted for macro cells stand in the way. As discussed below, they agree targeted FCC action is needed to reduce time-consuming and unnecessary regulatory obstacles to infrastructure siting. As the U.S. Chamber of Commerce explains, "now is the time [for the FCC] to use its congressionally-mandated authority to remove local government impediments that hinder the ability of the private sector to provide fast and affordable broadband."[81]

1. The FCC Should Ensure that Application Fees and/or ROW Use Charges Are Cost-Based.

Numerous commenters agree with T-Mobile that the FCC should limit fees charged to process small cell and other wireless facility applications and for the use of public ROWs to actual processing and ROW management costs.[82] As Crown explains, "[a]ny such fees … should be commensurate with the cost to the jurisdiction of reviewing the application and maintaining the applicable rights-of-way, rather than some purported estimate of the value to the provider."[83] Commenters also recognize that those fees must be publicly disclosed,[84] and that

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[80] *See, e.g.*, The Latino Coalition Comments, WT Dkt. No. 16-421 (Mar. 8, 2017); U.S. Black Chambers, Inc. Comments, WT Dkt. No. 16-421 (Mar. 8, 2017).

[81] U.S. Chamber of Commerce at 3.

[82] *See, e.g.*, CCA at 15-16; Conterra Broadband Services and Uniti Fiber Comments, WT Dkt. No. 16-421, at 7-8, 18-23 (Mar. 8, 2017) ("Conterra"); Crown at 28; CTIA at 28-33; ExteNet at 39; Globalstar, Inc. Comments, WT Dkt. No. 16-421, at 14 (Mar. 8, 2017) ("Globalstar"); Lightower at 27, 29; Mobilitie at 17; Sprint at 32-39; Verizon at 14-18; WIA at 67-69; The Wireless Internet Service Providers Association Comments, WT Dkt. No. 16-421, at 6 (Mar. 8, 2017) ("WISPA").

[83] Crown at 28.

[84] *See, e.g.*, CCA at 9, 19-20; Conterra at 23; ExteNet at 39; Lightower at 27, 29; Mobilitie at 17; WISPA at 8.

localities cannot discriminate among different classes of providers when assessing those fees.[85] As a result, a fee is only "competitively neutral and nondiscriminatory" if it does not exceed the costs imposed on other providers for similar access.[86] And as T-Mobile explained in its comments, any third-party consulting fees/expenses, licensing fees, or other charges designed to generate revenue rather than recover direct costs, also should be prohibited.[87]

2. The FCC Should Clarify What Is an Effective Prohibition for Purposes of Sections 253 and 332.

Commenters also agree the FCC should clarify when state and local requirements "prohibit or have the effect of prohibiting" service, contrary to Sections 253 and 332.[88] As CCA explains, "[w]hile not denying applications outright, many state and local practices unreasonably stall or inhibit broadband siting projects."[89] Commission clarification of the meaning of each statute is therefore "critical to achieving Congress's and the Commission's expressed policy goals."[90]

With respect to Section 253, commenters recognize that clarification of this term has two independent elements. First, the FCC should clarify that a regulation prohibits/effectively prohibits service contrary to Section 253 if it "materially inhibits or limits" the ability of any

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[85] *See, e.g.*, Crown at 28.

[86] Mobilitie, LLC Petition for Declaratory Ruling, WT Dkt. No. 16-421, at 31-34 (Nov. 15, 2016) ("Mobilitie Petition"); Crown at 28.

[87] T-Mobile at 11.

[88] *See, e.g.*, AT&T at 5; CTIA at 22-25; ExteNet at 17-29 ; Mobile Future Comments, WT Dkt. No. 16-421, at 3-4 (Mar. 8, 2017) ("Mobile Future"); Mobilitie at 17-18; Sprint at 16; Verizon at 11-14; WIA at 22-23.

[89] CCA at 23-24.

[90] *Id*. at 24.

competitor to compete,[91] as set forth in the FCC's *California Payphone* case.[92] Second, the FCC should clarify that a regulation prohibits/effectively prohibits service contrary to Section 253 if it creates a "substantial barrier" to or otherwise impedes the provision of any telecommunication service,[93] consistent with the Ninth Circuit's original *Auburn* standard.[94] Consistent with these interpretations, the FCC should find that carriers need not show an actual or insurmountable prohibition of service to trigger Section 253.[95] Likewise, the record supports declaring the following to be effective prohibitions: moratoria or *de facto* moratoria;[96] onerous application processes;[97] and unfettered discretion to deny an application based on vague aesthetic concerns, impacts on property values, or other factors that are often a pretext to regulate based on RF emissions.[98]

With respect to Section 332, commenters agree that old tests interpreting what is an effective prohibition based on coverage gaps developed in the macrocell context are no longer meaningful or workable in an era where tens or even hundreds of thousands of small cells will be

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[91] *See, e.g.*, AT&T at 5; CTIA at 22-25; Mobile Future at 3-4; Verizon at 11-14.

[92] *California Payphone Ass'n Petition for Preemption*, Memorandum Opinion and Order, 12 FCC Rcd 14191 (1997) ("*California Payphone*").

[93] *See, e.g.*, ExteNet at 17-29 ; Verizon at 11-14; WIA at 22-23.

[94] *City of Auburn v. Qwest Corp.*, 260 F.3d 1160 (9th Cir. 2001). As T-Mobile explained in its comments, while the Ninth Circuit subsequently departed from the broader *Auburn* standard in favor of a narrower "actual or effective prohibition" test espoused by the Eighth Circuit, the *Auburn* standard, in combination with the *California Payphone* interpretation, is the better approach and the one that should be adopted by the Commission. *See* T-Mobile at 15 n.34.

[95] ExteNet at 18; Lightower at 17-18; WIA at 23.

[96] *See, e.g.*, AT&T at 4; CTIA at 25-26; Mobile Future at 4; Mobilitie at 18.

[97] *See, e.g.*, AT&T at 4.

[98] *See, e.g.*, *Id*. at 4; ExteNet at 9, 18, 33.

deployed.[99] As Sprint explains: "Wireless carriers can no longer provide coverage maps, participate in extensive zoning hearings, and pay third-party consultants to produce a study about whether a small cell should be placed in one of ten potential locations in a locality."[100] As a result, the FCC should declare that the regulation of need, technology, coverage/capacity, least intrusive means, or other business issues violate Section 332.[101] Quite simply, "[d]eployment efforts are hurt where siting authorities institutionalize what can be a highly subjective debate over technology or location, often between industry experts and lay persons."[102]

In the event the FCC nonetheless determines that localities may consider coverage issues as part of their review under Section 332, it should adopt guidelines regarding the appropriate scope of that consideration. As T-Mobile explained in its comments, the FCC should reject the outdated "lack of a feasible alternative" and "least intrusive means" tests, and clarify instead that a gap in service exists where a provider concludes that it does not or will not have sufficient signal strength or system capacity to allow it to provide reliable service to consumers in residential and commercial buildings.[103]

3. The FCC Should Accelerate Its Shot Clocks and Add a Deemed Granted Remedy.

The record includes strong support to further accelerate the Section 332 shot clocks (currently 90 days for collocations, and 150 days for all other sites). Like T-Mobile, CTIA agrees that the shot clocks should be reduced to no more than 60 days for collocations and 90

[99] *See, e.g.*, Sprint at 16; T-Mobile at 20-22; *see also* Mobile Future at 3-4.

[100] Sprint at 16.

[101] *See, e.g.*, CCA at 28-29; Sprint at 16; T-Mobile at 20-22.

[102] CCA at 28-29.

[103] T-Mobile at 21. The assessment of sufficient signal strength or system capacity should be made by the provider based on its expertise, not the local jurisdiction. *Id*.

days for new sites.[104] Mobile Future similarly proposes 60 days for small cell collocations and 90 days for other small facility requests,[105] while CCA suggests 30 days for collocations and 75 days for new sites.[106] Other commenters propose a 60-day shot clock for all sites (Mobilitie and Verizon),[107] for collocations (Crown, ExteNet and Lightower),[108] or for small cells (WIA and Sprint).[109] Regardless of the formulation, the message is clear: The Commission must accelerate its shot clocks to address the unreasonable delays providers continue to encounter and which will become increasingly unworkable as the deployment of small cells accelerates.

In order to make the accelerated shot clocks meaningful, however, commenters recognize that the FCC must add a "deemed granted" remedy when localities fail to act within the prescribed timeframe.[110] As noted above, litigation is simply not a workable solution given the large numbers of expected deployments. A deemed granted remedy is therefore needed to "ensure local authorities cannot delay a project without proper justification."[111] T-Mobile also agrees with commenters that the FCC must apply its shot clocks to cover *all* aspects of approval, including any required ROW access/franchise agreements or pre-application procedures,[112] and that it should not extend the shot clocks for batch applications.[113]

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[104] CTIA at 34-38.

[105] Mobile Future at 4-5.

[106] CCA at 11.

[107] Mobilitie at 19-21; Verizon at 26-27.

[108] Crown at 37-38; ExteNet at 19, 36-39; Lightower at 23.

[109] WIA at 3; Sprint at 41-42.

[110] *See, e.g.*, AT&T at 5; CCA at 13-14; Crown at 33-36; CTIA at 39-43; Sprint at 22-27; Verizon at 23-26; WIA at 3-4.

[111] CCA at 9.

[112] *See, e.g.*, Verizon at 30-31.

[113] *See, e.g.*, Crown at 37-38; Sprint at 41-44.

4. The FCC Should Clarify that Section 253 Applies to Wireless Telecommunications and Prevents Discriminatory Treatment.

The record likewise supports clarification by the Commission that Section 253's protections extend to *all* telecommunications services, including wireless services.[114] As T-Mobile explained, clarification is needed because some localities have taken the position that challenges to local zoning authority regarding wireless facilities are governed exclusively by Section 332, and therefore Section 253 does not apply.[115] T-Mobile agrees with Crown, ExteNet, and TechFreedom that the FCC should clarify that Section 253 prevents discriminatory treatment of wireless deployments compared to other telecommunications providers, including wireline.[116]

5. The FCC Should Clarify Sections 253 and 332 Apply to Requests to Site Facilities on Municipal Poles and ROWs.

In its comments, T-Mobile explained that the FCC should clarify that requests to access municipal poles and ROWs, and the terms and conditions of such access, implicate regulatory rather than proprietary functions—and therefore the protections of Section 253 (including the requirement that ROW and pole use charges be "fair and reasonable") and Section 332 (including the shot clocks) apply. CCA, Crown, and CTIA similarly recognize that the FCC should clarify that access to poles and ROWs is not a proprietary function.[117]

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[114] *See, e.g.*, CCA at 26; Crown at iii, 24.

[115] T-Mobile at 35-36.

[116] *See* Crown at iii; ExteNet at 19; TechFreedom Comments, WT Dkt. No. 16-421, at 7-8 (Mar. 8, 2017) ("TechFreedom"); *see also* CCA at 19 ("Localities should not be permitted to discourage wireless infrastructure investment by extracting larger sums from competitive carriers based on the type of carrier they are as opposed to the cost associated with their use of a site").

[117] *See* CCA at 26-28 & n.114; Crown at 27; CTIA at 43-46.

6. The FCC Should Eliminate or Streamline Unnecessary Environmental, Preservation, and Tribal Reviews.

The record also supports action by the Commission to eliminate or streamline unnecessary environmental and historic preservation reviews. For example, the record supports FCC action to develop broader exclusions that exempt small wireless installations from historic preservation and/or tribal reviews,[118] and/or exempt ROW structures under 125 feet from National Environmental Policy Act ("NEPA") reviews.[119] T-Mobile agrees with these proposals, and joins CCA in calling on the FCC to "creat[e] timelines and dispute resolution mechanisms within the rules" governing the filing of Environmental Assessments ("EAs").[120]

Relatedly, T-Mobile proposed eliminating the requirement to file an EA for floodplain installations above the base flood elevation. Verizon includes a similar proposal to eliminate unnecessary floodplain reviews,[121] and CCA concurs the Commission should "revisit[] rules related to floodplains."[122] T-Mobile also agrees that the FCC must take steps to improve the tribal review process,[123] and that it should take steps to exclude collocations on twilight towers from historic preservation review.[124]

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[118] *See, e.g.*, CTIA at 47-49; Mobilitie at 4-5; *see also* CCA at 44.

[119] *See, e.g.*, Sprint at 47-48.

[120] CCA at 44.

[121] Verizon at 38-39.

[122] CCA at 44.

[123] *See, e.g.*, CTIA at 5; NTCH, Inc. Comments, WT Dkt. No. 16-421, at 1, 7-8 (Mar. 8, 2017); Sprint at 44-47; Verizon at 33-37.

[124] *See* Verizon at 37-38.

7. The FCC Should Take Additional Immediate Steps to Facilitate Wireless Deployments.

Commenters also include a number of additional actions government can take to facilitate wireless deployment. Like Globalstar, T-Mobile agrees with Commissioner Pai that "[I]t's time for the federal government to do its part to speed up the deployment of broadband on federal lands."[125] T-Mobile also agrees with Verizon that the Commission should clarify that utility-owned light poles fall within the definition of "pole" as that term is used in Section 224 of the Communications Act, dealing with pole attachments.[126] And T-Mobile supports CCA's call for greater FCC outreach—which should occur in tandem with the actions described above and in T-Mobile's comments—to educate states and localities on existing federal laws and the challenges carriers face when deploying broadband infrastructure.[127]

B. While Jurisdictions Are Beginning to Take Some Steps Along These Lines, Progress Is Too Slow to Meet 5G Demands.

Evidence submitted by localities shows many of these protections are already in place in some jurisdictions, demonstrating that the protections are reasonable. However, while some progress has been made, it is far from consistent nationwide and therefore does not mean federal action is not needed. Foremost, these protections are being adopted piecemeal and over time, meaning their benefits have yet to reach most consumers. Moreover, progress in the jurisdictions that have adopted some of these protections was often hard won, frequently following years of litigation or negotiation. There simply is not time to improve siting laws on a jurisdiction-by-

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[125] Ajit Pai, Comm'r, FCC, *A Digital Empowerment Agenda*, Cincinnati, Ohio, at 8 (Sept. 13, 2016), *quoted in* Globalstar at 15.

[126] Verizon at 31-33; *see* 47 U.S.C. § 224.

[127] CCA at 10, 22-23.

jurisdiction basis if we as a Nation want to maximize the benefits of 5G for all Americans, not just a select few in certain fortunate areas.

Nevertheless, it is instructive to note individual examples in the record that support application of the relief outlined above on a nationwide basis. For example:

- Many jurisdictions already process siting requests more quickly than the accelerated deadlines T-Mobile and others have proposed. Dublin, OH, for instance, states that it completes the collocation review process in 28 days or less.[128] Likewise in Houston, TX, the review process for small cell deployments, such as collocations, "usually takes 2 weeks, but not more than 30 days to process and complete the site review," while the review process for new macro tower deployments takes 2-4 weeks if a variance is not required.[129] Elsewhere, Louisville, KY generally processes small cell siting requests within 30 days,[130] and Matthews, NC processes wireless siting applications in as little as 10 days.[131] And in Kenton County, KY, the maximum time permitted to act upon new facility siting requests is 60 days.[132]

- Some jurisdictions have already adopted a deemed granted remedy, including the state of California.[133] This demonstrates that a deemed granted approach should not be unduly burdensome.

- Some jurisdictions already preclude consideration of need-related issues, such as technology choices, intended use, coverage gaps, or alternatives considered.[134]

[128] City of Dublin, Ohio Comments, WT Dkt. No. 16-421, at 8 (Mar. 7, 2017).

[129] City of Houston, Texas Comments, WT Dkt. No. 16-421, at 3 (Mar. 8, 2017) ("Houston").

[130] Louisville/Jefferson County, Kentucky Metro Government Comments, WT Dkt. No. 16-421 at 6 (Mar. 8, 2017) ("Louisville").

[131] Town of Matthews, North Carolina Comments, WT Dkt. No. 16-421, at 2 (Mar. 8, 2017).

[132] Kenton County Mayors Group Comments, WT Dkt. No. 16-421, at 7 (Mar. 3, 2017) ("Kenton County Mayors Group").

[133] *See, e.g.*, Kenton County Mayors Group at 1; Lightower at 13; City and County of San Francisco Comments, WT Dkt. No. 16-421, at 26 (Mar. 8, 2017) ("San Francisco"); *see also* Cal. Gov. Code § 65964.1.

[134] *See, e.g.*, San Francisco at 4 (resulting from litigation successfully challenging the contrary ordinance).

III. THE RECORD CONFIRMS THAT THE COMMISSION HAS AMPLE AUTHORITY TO ACT.

Notwithstanding the claims of some commenters,[135] the Commission has ample authority to take the actions recommended herein.[136] As discussed below, many of the claims that the FCC lacks authority to act are rooted in misplaced concerns about the scope of the relief requested. In fact, providers are seeking narrow, targeted relief to ensure that the purposes of Sections 253 and 332 are properly carried out. This relief falls well within the scope of the Commission's authority and does not present constitutional or other concerns.[137]

A. FCC Authority to Interpret Sections 253 and 332 Is Well Settled.

It is well settled that agencies are authorized to interpret ambiguous provisions in the statutes they administer.[138] In the case of the FCC, the Supreme Court has held that "Congress

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[135] *See, e.g.*, League of Minnesota Cities Comments, WT Dkt. No. 16-421, at 6-9 (Mar. 8, 2017) ("League of Minnesota Cities"); National Association of Regulatory Utility Commissioners Comments, WT Dkt. No. 16-421, at 7 (Mar. 8, 2017) ("NARUC"); City of New York Comments, WT Dkt. No. 16-421, at 6-9 (Mar. 8, 2017); Cities of San Antonio, Texas; Eugene, Oregon; Bowie, Maryland; Huntsville, Alabama; and Knoxville, Tennessee Comments, WT Dkt. No. 16-421, at 10-12, 14-16 (Mar. 8, 2017) ("San Antonio"); San Francisco at 16-17; Smart Communities Siting Coalition Comments, WT Dkt. No. 16-421, at iv-v, 50-55 (Mar. 8, 2017) ("Smart Communities Siting Coalition"); Texas Municipal League Comments, WT Dkt. No. 16-421, at 22-25 (Mar. 8, 2017) ("Texas Municipal League"); Virginia Joint Commenters Comments, WT Dkt. No. 16-421, at 26-52 (Mar. 8, 2017) ("Virginia Joint Commenters").

[136] *See, e.g.*, Conterra at 15-16; CTIA at 36-43; Mobile Future at 4-5; T-Mobile at 8-9; U.S. Chamber of Commerce at 3; Verizon at 11-14; WISPA at 4-5.

[137] As discussed further below, localities' objections to the exercise of FCC authority are similar to those they raised in the context of prior FCC actions on infrastructure matters. Those objections are unfounded and no more valid here than they were when the FCC previously rejected them.

[138] *Nat'l Cable & Telecoms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 980 (2005) ("*Brand X*") ("[A]mbiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion. Filling these gaps … involves difficult policy choices that agencies are better equipped to make than courts. If a statute is ambiguous, and the implementing agency's construction is reasonable, *Chevron* requires a federal court to accept the agency's construction of the statute ….") (quotations

has delegated to the Commission the authority to 'execute and enforce' the Communications Act,"[139] and the Act itself states that the Commission "may perform any and all acts, make such rules and regulations, and issue such orders … as may be necessary in the execution of its functions."[140] Indeed, the Commission has already acted in a number of proceedings to interpret ambiguities in Sections 253 and 332 to remove deployment barriers, and the exercise of that authority has been recognized and upheld by the courts.

For example, the Commission's *Shot Clock Declaratory Ruling* and *Wireless Infrastructure Order* resolved a number of controversies by adopting definitive interpretations of ambiguous provisions in Section 332(c)(7), and interpreting how their substantive and procedural requirements should be applied.[141] In particular, the Commission used its authority under that statute to clarify the maximum presumptively reasonable time frames for review of siting applications and the criteria local governments may apply in deciding whether to approve them. On judicial review, two Courts of Appeals and the Supreme Court confirmed that the Commission has authority to render such binding statutory interpretations and that courts must accord them deference.[142] And the Supreme Court's 2015 decision in *T-Mobile v. City of*

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omitted) (citing *Chevron U.S.A. Inc. v. NRDC*, 467 U.S. 837, 843-44, 865-66 (1984)); *see also Time Warner Entm't Co. v. FCC*, 56 F.3d 151, 174-76 (D.C. Cir. 1995) (agencies are empowered to interpret their organic statutes through rules and other mechanisms).

[139] *Brand X*, 545 U.S. at 980 (2005).

[140] 47 U.S.C. § 154(i).

[141] *Petition to Clarify Provisions of Section 332(c)(7) to Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Rcd 13994, 14020 ¶ 67 (2009) ("*Shot Clock Declaratory Ruling*"), *aff'd, City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff'd*, 133 S. Ct. 1863 (2013); *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865, 12866-69 ¶¶ 2-8, 12878-81 ¶¶ 29-34 (2014) ("*Wireless Infrastructure Order*"), *aff'd, Montgomery County v. FCC*, 811 F.3d 121 (4th Cir. 2015).

[142] *See id*.

Roswell reinforced that authority.[143] The Commission has likewise exercised its authority to interpret the term "has the effect of prohibiting" in Section 253(a) in its 1997 *California Payphone* decision,[144] and courts have recognized the FCC's ability to interpret ambiguous terms in Sections 253.[145]

The Commission is well within its authority to expand these interpretations and clarify or modify those interpretations. The Supreme Court has routinely recognized that agencies have discretion to allow their interpretations of ambiguous statutes to evolve,[146] and they may adjust their views as long as they acknowledge and explain the change.[147] The FCC should follow the Chairman's lead and exercise that authority here:

> [T]he FCC must aggressively use its statutory authority to ensure that local governments don't stand in the way of broadband deployment. In section 253 …, Congress gave the Commission the express authority to preempt any state or local regulation that prohibits or has the effect of prohibiting the ability of any entity to provide wired or wireless service…. In section 332(c)(7) …, Congress clearly and specifically granted the Commission the power to remove barriers to infrastructure deployment. It is time

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[143] T-*Mobile S., LLC v. City of Roswell*, 135 S. Ct. 808, 817 (2015).

[144] *California Payphone*, 12 FCC Rcd at 14206 ¶ 31; *see also id.* at 14209 ¶ 38.

[145] *See, e.g.*, *TCG New York, Inc. v. City of White Plains*, 305 F.3d 67, 76 (2nd Cir. 2002) ("[T]he FCC's decisions interpreting the scope of § 253(c) merit some deference."); *id*. ("We agree with [FCC] precedent[]" in the *California Payphone* decision interpreting Section 253(a).); *BellSouth Telecomms., Inc. v. Town of Palm Beach*, 252 F.3d 1169, 1188 n.l (6th Cir. 2001) ("As the federal agency charged with implementing the Act, the FCC's views on the interpretation of Section 253 warrant respect."); *N.Y. State Thruway Auth. v. Level 3 Commc'ns, LLC*, 734 F. Supp. 2d 257, 265 (N.D.N.Y. 2010) (interpretations or applications of the terms "reasonable," "fair," "neutral," and "discriminatory" in Section 253(c) require the FCC's expertise and fall within its primary jurisdiction).

[146] *See FCC v. Fox Television Stations, Inc.*, 129 S. Ct. 1800, 1810-11 (2009) ("*Fox*"); *Smiley v. Citibank*, 517 U.S. 735, 742 (1996); *Rust v. Sullivan*, 500 U.S. 173, 187 (1991).

[147] *See Fox*, 129 S. Ct. at 1810-11; *Good Samaritan Hosp. v. Shalala*, 508 U.S. 402, 417 (1993).

> for us to fully use that authority to preempt needless municipal barriers to broadband deployment.[148]

Finally, there is no merit to claims that the FCC can only proceed by rulemaking.[149] The FCC has broad discretion as to how it conducts its proceedings,[150] and this includes whether to proceed by declaratory ruling (5 U.S.C. § 554(e)) or rulemaking (5 U.S.C. § 553).[151] As the D.C. Circuit has explained, an agency does not have to engage in notice-and-comment rulemaking to alter its interpretation of a statutory term.[152] Rather, "so long as all interested parties are afforded notice and an opportunity to present their position," the Commission "has discretion to proceed by means of rulemaking, waiver, declaratory ruling, or even adjudication in making policy."[153]

B. Providers Are Seeking Lawful Clarification Regarding What Are Reasonable Fees and Charges—Not Standard Fees or Subsidies.

Wireless carriers and infrastructure providers are seeking narrow, targeted relief with respect to application fees and ROW charges: They are merely asking the FCC to clarify the line between what are reasonable fees or charges under Section 253 and 332 and what are not, in

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[148] Ajit Pai, Comm'r, FCC, *A Digital Empowerment Agenda*, Cincinnati, Ohio, at 7 (Sept. 13, 2016).

[149] *See, e.g.*, Cityscape Consultants, Inc. Comments, WT Dkt. No. 16-421, at 6 (Mar. 7, 2017); Smart Communities Siting Coalition at v, 68-69.

[150] *FCC v. Schreiber*, 381 U.S. 279, 289-90 (1965); 47 U.S.C. § 154(j).

[151] *See FCC v. Pottsville Broad. Co.*, 309 U.S. 134, 138 (1940) (the choice of agency procedure is committed to the agency's discretion); *Viacom Int'l v. FCC*, 672 F.2d 1034, 1042 (2d Cir. 1982) (FCC has discretion to proceed by declaratory ruling rather than rulemaking); *Chisholm v. FCC*, 538 F.2d 349, 364-65 (D.C. Cir. 1976) (FCC may adopt new statutory interpretation through declaratory ruling rather than rulemaking); *see also* 47 C.F.R. § 1.2 ("The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.").

[152] *Alaska Prof'l Hunters Ass'n v. FAA*, 177 F.3d 1030, 1033-1034 (D.C. Cir. 1999).

[153] *1998 Biennial Regulatory Review*, Report and Order and Further Notice of proposed Rulemaking, 5 FCC Rcd 16673, 16691 ¶ 39 (2000); *see also, e.g.*, Conterra at 15-16; Mobilitie at 16-17; WIA at 24-25.

order to address the abuses outlined in the record. Providers are not, as some jurisdictions suggest,[154] asking the FCC to adopt a standard fee or require states and localities to subsidize providers. This focused ask falls well within the scope of the FCC's broad interpretive authority outlined in the preceding section. As a consequence, arguments by localities that FCC action here is contrary to precedent or the Constitution, or is otherwise unlawful, lack merit. To the contrary, affording localities the unfettered discretion they seek to set fees and charges would thwart the procompetitive mandate in Sections 253 and 332 and undermine the goals of both statutes.

1. Precedent Does Not Bar FCC Action.

Contrary to the claims of some commenters,[155] the 1893 *St. Louis v. Western Union* case[156] does not preclude the FCC from clarifying that charges for access to municipally-owned poles and ROWs must be cost-based to be reasonable, nondiscriminatory, and not an effective prohibition under Sections 253 and 332(c)(7). In *St. Louis*, the Court held that a city has the "right to exact compensation" for the use of its streets and public places, and that such

[154] *See, e.g.*, Town of Colonie, New York Comments, WT Dkt. No. 16-421, at 2 (Mar. 8, 2017); City of Columbia, South Carolina Comments, WT Dkt. No. 16-421, at 13 (Mar. 7, 2017) ("Columbia"); Community Wireless Consultants, Inc. Comments, WT Dkt. No. 16-421, at 4 (Mar. 6, 2017) ("Community Wireless Consultants"); City of Delaware, Ohio Comments, WT Dkt. No. 16-421, 3 (Mar. 7, 2017); Village of Johnstown, Ohio Comments, WT Dkt. No. 16-421, at 2 (Mar. 8, 2017) ("Johnstown"); Kenton County Mayors Group at 12; State of Maryland Department of Transportation-State Highway Administration Comments, WT Dkt. No. 16-421, at 6 (Mar. 8, 2017); League of Minnesota Cities at 11-12, 14; Mid-Ohio Regional Planning Commission Comments, WT Dkt. No. 16-421, at 2 (Mar. 8, 2017) ("Mid-Ohio"); Ottawa County Road Commission Comments, WT Dkt. No. 16-421, at 1 (Mar. 8, 2017); Smart Communities Siting Coalition at 51-54.

[155] *See, e.g.*, City of Arlington, Texas Comments, WT Dkt. No. 16-421, at 5-10 (Mar. 7, 2017); National League of Cities, *et al*. Comments, WT Dkt. No. 16-421, at 17-20 (Mar. 8, 2017) ("National League of Cities"); Smart Communities Siting Coalition at 65-66.

[156] 148 U.S. 92 (1893) ("*St. Louis*").

compensation is more like rent than a tax.[157] Here, providers are not questioning the right of jurisdictions to receive compensation for the use of their poles and ROWs—they are simply asking the FCC to clarify that such compensation must be cost-based to be reasonable and nondiscriminatory consistent with Sections 253 and 332(c)(7).

While the Court indicated that determining whether a particular charge is reasonable must take into account local circumstances,[158] that finding in no way circumscribes the FCC's ability to interpret Congress's direction that such fees must be reasonable and nondiscriminatory. Even with FCC guidance that fees must be cost-based, the FCC is not being asked to set a standard rate or fee. As a consequence, local circumstances will still inform whether a charge for a particular pole or ROW in a particular area falls within the guideposts set by the FCC, consistent with *St. Louis*. As one commentator has explained, "section 253's limitation on local authority to managing the physical use of public rights-of-way carries with it the concomitant limitation of only collecting fees that are related to the actual costs incurred in doing so…. [S]uch a limitation … is necessary to achieve the facilities-based competition envisioned by Congress."[159]

2. The Fifth Amendment Does Not Bar FCC Action.

There is no merit to arguments that limiting ROW charges to direct recovery of economic costs is an unconstitutional taking, contrary to the Fifth Amendment.[160] The Fifth Amendment

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[157] *Id*. at 98-100.

[158] *See id*. at 104-05.

[159] *See* Barbara S. Esbin & Gary S. Lutzker, *Poles, Holes and Cable Open Access: Where the Global Information Superhighway Meets The Local Right-of-Way*, 10 CommLaw Conspectus 23, 46 (2001).

[160] *See, e.g.*, City of Newport Beach, California Comments, WT Docket 16-421, at 1 (Jan. 24, 2017) ("Newport Beach"); San Francisco at 24; Smart Communities Siting Coalition at 65-66; Texas Municipal League at 12, 21; Virginia Department of Transportation Comments, WT Docket 16-421, at 13-16 (Mar. 8, 2017) ("VDOT"); Virginia Joint Commenters at 26-52.

requires that for any government taking of "private property," there must be "just compensation."[161] Here, case law indicates that public poles and ROWs are not private property, but, in any case, cost-based fees would afford localities just compensation for the use of such poles/ROWs.

As a threshold matter, courts have long held that jurisdictions do not have a proprietary interest in ROWs managed for the benefit of the public. These courts have explained that because municipalities hold public ROWs in a "governmental" or "trust" capacity for the "use of the public," they simply "do not possess proprietary powers over the public streets."[162] In other words, municipalities "have no proprietary interest in city streets as their private property."[163] As one court long ago explained when addressing the nature of the interest in ROWs held by municipalities: "The interest is exclusively *publici juris*, and is, in any aspect, totally unlike property of a private corporation, which is held for its own benefit and used for its private gain or advantage. Whatever rights of domain or enjoyment the municipal body possesses by such a title,

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[161] U.S. Const. amend. V.

[162] *See, e.g.*, *City and County of Denver v. Qwest Corp.*, 18 P.3d 748, 761 (Colo. 2001) ("It is well established that municipalities hold public rights-of-way in a governmental capacity."); *AT&T v. Village of Arlington Heights*, 620 N.E.2d 1040, 1044 (Ill. 1993) ("Municipalities do not possess proprietary powers over the public streets. They only possess regulatory powers. The public streets are held in trust for the use of the public."); *City of Albany v. State*, 21 A.D.2d 224, 225 (N.Y. App. Div. 1964), *aff'd* 207 N.E.2d 864 (N.Y. 1965) ("We have no difficulty in finding that … the land held for street purposes … [is] held in a governmental rather than a proprietary capacity.") (citations omitted); *City of International Falls v. Minn. Dakota & W. R. Co.*, 134 N.W. 302, 304 (Minn. 1912) ("The city has no proprietary rights in its streets. Whatever rights it has it holds merely in trust for the public use.").

[163] *Village of Kalkaska v. Shell Oil Co.*, 446 N.W.2d 91, 95 n.18 (Mich. 1989) (internal quotation omitted).

are of the nature of public and not private property, and the [takings] clause of the constitution … has no application to such rights …."[164]

Even assuming *arguendo* municipalities have a constitutionally protected private property right in their poles and ROWs, however, the requested FCC clarification would not result in an uncompensated taking.[165] The Supreme Court has repeatedly held that "in determining just compensation, 'the question is what has the owner lost.'"[166] Here, as long as ROW pricing permits a municipality to recover the costs associated with providing access to the ROWs, then the Takings Clause is not violated. That is, jurisdictions will still receive just compensation via cost-based fees, and therefore any theoretical taking would be adequately compensated.[167]

Indeed, the record shows that some state laws prohibit cities from charging revenue-generating rents for ROW use, and this prohibition has never been thought to raise any taking issues.[168] In California, for example, any fee imposed by a city for the placement or upgrading of telecommunications facilities (including antennas, lines or poles) "shall not exceed the reasonable costs of providing the service for which the fee is charged and shall not be levied for

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[164] *People v. Kerr*, 27 N.Y. 188, 200 (N.Y. 1863). *United States v. 50 Acres of Land*, 469 U.S. 24, 31 (1984), and *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 430 (1982), are inapposite. *50 Acres* dealt with the condemnation of a local public facility, and *Loretto* involved occupation of non-government-owned property—neither of which is at issue here.

[165] *See United States v. Riverside Bayview Homes*, 474 U.S. 121, 128 (1985) (holding that the Fifth Amendment does not prohibit takings, only uncompensated ones).

[166] *E.g., City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 710 (1999).

[167] *E.g.,* James B. Speta, *Competitive Neutrality in Right of Way Regulation: A Case Study in the Consequences of Convergence*, 35 Conn. L. Rev. 763, 803-04 (2003) ("So long as the pricing rule compensates the municipality for what it loses—the direct economic costs of the street cut—then the compensation prong of the Takings Clause seems satisfied.").

[168] *See* WIA at 69 n.158 (citing Cal. Gov. Code § 50030; Minn. Stat. §§ 237.163, 257.162; Utah Code Ann. §§ 72-7-102, 10-1-46).

general revenue purposes."[169] Yet, courts interpreting this state code have not raised takings concerns.[170] Certainly, if state laws forbidding the assessment of revenue-generating rents do not raise a taking issue, then federal guidance allowing charges to recover the actual costs involved does not either.

3. The Tenth Amendment Does Not Bar FCC Action.

Nor does the Tenth Amendment bar FCC action clarifying when a fee is reasonable and nondiscriminatory.[171] While the Tenth Amendment reserves to the states "those powers not delegated to the United States"[172]—meaning the federal government "may not compel the States to implement … federal regulatory programs"[173]—no such federally mandated state action is at issue here.

T-Mobile and other providers are not asking the FCC to require states or localities to enforce a government program or require compliance with a federal fee schedule or set rates. Instead, they are asking the FCC to set a benchmark clarifying when fees become unreasonable, discriminatory, and an effective prohibition in violation of Section 253 and 332(c)(7). Such a request is well within the gamut of FCC interpretive action upheld by courts. Most recently, for example, in *Montgomery County v. FCC*, the Fourth Circuit upheld an FCC order implementing 47 U.S.C. § 1455(a), under which local applications for wireless facility modification requests

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[169] Cal. Gov. Code § 50030.

[170] *See Williams Commc'ns v. City of Riverside*, 114 Cal. App. 4th 642 (Cal. App. 4th Dist. 2003). In *Williams*, the court held that payment required in connection with a negotiated license agreement to install fiber cable in city streets exceeded the reasonable costs incurred by the city, contrary to Section 50030 of the California Code. The case does not discuss or mention takings concerns.

[171] *See, e.g.*, San Antonio at 28; Smart Communities Siting Coalition at 65 n.147.

[172] U.S. Const. amend. X.

[173] *Printz v. United States*, 521 U.S. 898, 925 (1997).

were deemed granted after 60 days.[174] The court held that the FCC did not violate the Tenth Amendment "because it [did] not require states to take any action at all," but rather "provide[d] a remedy to ensure that states did not circumvent statutory requirements."[175] The same is true here: The requested FCC action would "do[] no more than implement the statute."[176]

4. Market-Based ROW Rates Do Not Exist.

A number of commenters claim that localities should be permitted to recover "market-based" rates for ROWs,[177] but this is a fallacy. The record shows that ROWs are a monopoly, and there is no real "market" to discipline ROW access rates.[178] Because municipalities have unchecked monopoly power over ROWs and other essential public infrastructure, any "market-based" competition theory simply does not apply.[179] As Mobilitie has noted, "[c]ourts have observed that local governments' *de facto* monopoly control over public rights of way creates the 'danger that local governments will exact artificially high rates' for the use of public rights of way."[180] The record shows this danger has come to pass, as municipalities "adopt fees as high as

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[174] 811 F.3d 121 (4th Cir. 2015).

[175] *Id*. at 128-29.

[176] *Id*. at 129.

[177] *See, e.g.*, Community Wireless Consultants at 4; Georgia Municipal Association, Inc. Comments, WT Dkt. No. 16-421 at 5 (Feb. 28, 2017); Houston at 7-8; Newport Beach, at 1; City of New York at 5; Board of County Road Commissioners of the County of Oakland, Michigan, WT Dkt. No. 16-421, at 9 (Mar. 7, 2017); Oregon Department ofTransportation Comments, at 1 (Mar. 8, 2017); San Antonio at 21-25; South Dakota Department of Transportation Comments, WT Dkt. No. 16-421, at 4-5 (Mar. 6, 2017) ("SDDOT"); Smart Communities Siting Coalition at 37-40, Exh. 2; Texas Municipal League at 9-10; VDOT at 14.

[178] *See, e.g.*, AT&T at 18; ExteNet at 41; Sprint at 33; TechFreedom at 5; WIA at 69.

[179] *E.g., Competitive Neutrality in Right of Way Regulation*, 35 Conn. L. Rev. 763, 800-02 (2003).

[180] Mobilitie Petition at 4 (quoting *TCG New York, Inc. v. City of White Plains*, 305 F.3d 67, 79 (2d Cir. 2002)); *see also Puerto Rico Tel. Co. v. Municipality of Guayanilla*, 283 F. Supp. 2d 534, 544 (D.P.R. 2003), *aff'd* 450 F.3d 9 (1st Cir. 2006). *United States v. Chandler-Dunbar*

they can command"[181] from carriers who "have no choice but to pay what the municipalities demand if they want to serve customers in that area."[182] Federal clarification that ROW charges must be cost-based is therefore needed to ensure localities do not continue to exact unreasonable or discriminatory charges, contrary to statute.

5. Unfettered ROW Charges Would Undermine Sections 253 and 332.

The unfettered ability of localities to charge whatever they want for ROW access, as some seem to suggest,[183] would render Sections 253 and 332 meaningless and upend the pro-competition mandate of the Telecommunications Act of 1996 ("1996 Act"). Through the 1996 Act, which added Sections 253 and 332(c)(7) to the Communications Act, Congress sought to establish "a pro-competitive, deregulatory national policy framework" for the United States telecommunications industry.[184] It also sought "to accelerate rapidly private sector deployment of advanced telecommunications … to all Americans by opening all telecommunications markets to competition."[185] With respect to ROW charges, Congress provided that they must be fair, reasonable, competitively neutral, and nondiscriminatory[186]—and like all potential barriers cannot have the effect of prohibiting service.[187]

Water Power Co., 229 U.S. 53 (1913), which held that compensation for the taking of private property by eminent domain is fair market value, is inapplicable here. This is not an eminent domain case, and market-based rates for ROWs—which are a monopoly—do not exist.

[181] AT&T at 18.

[182] Sprint at 33.

[183] *See, e.g.*, Illinois Municipal League Comments, WT Dkt. 16-421, at 2 ("IML"); League of Minnesota Cities at 11-12.

[184] S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

[185] H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. 113 (1996) ("H.R. Conf. Rep. No. 104-458").

[186] 47 U.S.C. § 253(c).

[187] *Id.* §§ 253(a), 332(c)(7)(B)(i).

These limitations on the authority of local governments to impose ROW and other siting fees are necessary to promote the full purposes and objectives of Congress in adopting the 1996 Act. As discussed above, record evidence demonstrates how egregious ROW charges in particular have become in many jurisdictions across the country, and how they are delaying—not accelerating—the deployment of advanced telecommunications services. Halting this practice is increasingly important as providers roll-out 5G services and continue to enhance networks to meet demand, which triggers the need for many more ROW sites.[188] If local governments are permitted open-ended discretion to charge fees that are unrelated to the costs associated with a company's use of the ROWs or a local government's costs of managing the ROWs, then local governments could effectively thwart the 1996 Act's pro-competition mandate and render Section 253(a) null. Congress did not intend such a result.

C. Providers Are Seeking Lawful Clarification Regarding Effective Prohibitions or Discriminatory Treatment—Not Sweeping "One-Size-Fits-All" Mandates.

A number of commenters wrongly suggest that providers are seeking sweeping "one-size-fits-all" government mandates or prescriptive regulations.[189] These commenters seem particularly concerned that their ability to review applications for completeness, or otherwise ensure the safety and welfare of their citizens, will be adversely affected by the clarifications

[188] *See* TechFreedom at 2, 7-8; T-Mobile at 4-14; *Notice* at 2-4, 7-8; *Cf. N.J. Payphone Ass'n v. Town of W. N.Y.*, 299 F.3d 235, 245 (3d Cir. 2002) (recognizing that "access to [rights-of-way] is critical to the ability of service providers to reach potential customers").

[189] *See, e.g.*, City of Austin, Texas Comments, WT Dkt. No. 16-421, at 3 (Mar. 8, 2017) ("Austin"); Cary, North Carolina Comments, WT Dkt. 16-421, at 1 ("Cary"); Columbia at 12; Community Wireless Consultants at 3, 6; DuPage Mayors and Managers Conference Comments, WT Dkt. No. 16-421, at 2 ("Dupage"); City of Henderson, Kentucky Comments, WT Dkt. No. 16-421, at 1 ("Henderson, KY"); City of Henderson, Nevada Comments, WT Dkt. No. 16-421, at 2 ("Henderson, NV"); Houston at 11; League of Minnesota Cities at 7, 10-11, 14; Maryland Municipal League Comments, WT Dkt. No. 16-421, at 1 (Mar. 8, 2017) ("Maryland Municipal League"); Missouri Municipal League Comments, WT Dkt. No. 16-421, at 1 (Mar. 8, 2017) ("Missouri Municipal League"); Smart Communities Siting Coalition at 51-54.

providers are seeking. These concerns are misplaced. Providers are simply asking the FCC to adopt some basic guardrails to guide the application of statutory protections in Section 253 and 332 to remove siting barriers and facilitate deployment. The requested guardrails will not compromise the ability of localities to review applications and address legitimate safety and welfare concerns, as long as localities do so pursuant to clear, objective standards that are applied on a nondiscriminatory basis and do not have the effect of prohibiting service.

1. The FCC Should Clarify When an Application Is Complete.

Providers do not disagree that jurisdictions should be able to review applications for completeness and toll shot clocks when they are incomplete,[190] —but there must be clear standards governing when a siting request is complete, and those standards cannot be an excuse for an effective prohibition or discrimination.[191] The record shows that some jurisdictions are requiring lengthy and burdensome "pre-application" procedures before they accept an application triggering the shot clock timeframes.[192] During this "pre-application" review period, cities may request modifications based on departmental or community feedback, resulting in "a cycle of delay that may have no practical end."[193] Still other jurisdictions refuse to accept

[190] *See* Cary at 3, 6; DuPage at 3-4; League of Arizona Cities and Towns, *et al*. Joint Comments, WT Dkt No. 16-421, at 1 (Mar. 8, 2017); National League of Cities at 12-13.

[191] *See, e.g.*, Crown at 22 (noting that cities attempt to evade the shot clock by declaring applications incomplete with no basis or considering each resubmission as a new application restarting the shot clock).

[192] *E.g.*, *id*. at 21.

[193] *Id*. at 21-22.

applications (for example, while they develop new rules),[194] or they declare applications incomplete "with no reasonable basis," thereby also evading the shot clocks.[195]

In its 2014 *Wireless Infrastructure Order*, the Commission stated that in order to toll a shot clock for incompleteness, a locality must have clear, publicly available guidelines.[196] While the Commission otherwise declined to elaborate at that time when an application is complete,[197] it should do so now. Consistent with the above, the Commission should make clear that application processing cannot be tolled for incompleteness due to any of the following reasons: any form of moratoria (including *de facto* moratoria); an applicant's failure to address need, technology, coverage/capacity, or other business issues; an applicant's failure to show that a proposed site is the least intrusive means for serving an area or to address alternative sites generally; and/or non-compliance with onerous application processes or vague aesthetic or other unnamed discretionary factors. As T-Mobile has explained, such factors are effective prohibitions of service and should be declared contrary to Sections 253 and 332.[198]

2. Any Safety and Welfare Concerns Are Misplaced.

Action by the Commission to clarify what is an effective prohibition or discriminatory treatment does not mean states and localities cannot address legitimate safety and welfare concerns.[199] Rather, jurisdictions may continue to protect safety and welfare as long as they do

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[194] T-Mobile at 19.

[195] Crown at 22.

[196] *See Wireless Infrastructure Order*, 29 FCC Rcd at 12970 ¶ 260.

[197] *See id*.

[198] *See* T-Mobile Comments at 15-22.

[199] *See, e.g.*, Austin at 7-8 (phrase "prohibit or have the effect of prohibiting" should not be interpreted to negatively impact public safety); Washington State Cities Comments, WT Dkt. No. 16-421, at 13 (Mar. 8, 2017) (FCC must consider safety needs associated with small cell

so in a competitively neutral manner that does not create a barrier to entry, or have the effect of prohibiting service, contrary to Sections 253(a) and 332(c)(7)(B)(i).[200] As the Conference Report accompanying the 1996 Act explained, "States may not exercise this authority [to protect public safety and welfare] in a way that has the effect of imposing entry barriers or other prohibitions" preempted by the 1996 Act.[201]

For example, T-Mobile agrees that wireless deployments should remain subject to non-discretionary structural and safety codes—if they are clear and objective and applied in a nondiscriminatory manner. As the Commission previously found when clarifying an analogous statute (Section 6409(a) of the Spectrum Act): "States and localities may require a covered request to comply with generally applicable building, structural, electrical, and safety codes or with other laws *codifying objective standards reasonably related to health and safety*."[202] This means that denials related to safety issues must be supported by written evidence tying the denial

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applications); Columbia at 11 (phrase "prohibit or have the effect of prohibiting" should not be interpreted to negatively impact public safety); State Department of Connecticut Department of Transportation Comments, WT Dkt. No. 16-421, at 1 (Mar. 8, 2017) (FCC should not reduce ability to protect safety and welfare); IML at 1 (safety needs must be determined locally); Johnstown at 1 (localities have a responsibility to ensure safety); League of Minnesota Cities at 14 (expressing concern FCC action will not take safety codes into consideration); Maryland Municipal League at 2 (localities must retain control over safety issues); Mid-Ohio at 2 (localities must ensure safety and welfare); Missouri Municipal League at 3 (municipalities are in best position to address safety issues); NARUC at 6 (wireless ROW uses must be reviewed for safety); City of Rochester, New York Comments, WT Dkt. No. 16-421, at 4 (Mar. 8, 2017) (municipalities are obligated to protect safety issues); Village of Schaumburg, Illinois Comments, WT Dkt. No. 16-421, at 1 (Mar. 7, 2017) (same); SDDOT at 2-3 (FCC cannot diminish state ability regulate safety needs of state ROWs); Waverly, Michigan Township Board Comments, WT Dkt. No. 16-421, at 1 (Mar. 8, 2017) (FCC should not diminish local ability to control road safety).

[200] *See* 47 U.S.C. § 253(b); H.R. Conf. Rep. No. 104-458 at 126; *see also, e.g.*, AT&T at 25; CTIA at 14; T-Mobile at 21 n.53; WIA at 27.

[201] H.R. Conf. Rep. No. 104-458 at 126.

[202] *Wireless Infrastructure Order* at ¶ 202.

to specific code provisions or to published safety requirements,[203] and any application of those safety laws must be fairly applied in a nondiscriminatory manner.[204]

Likewise, authorities can consider additional factors related to safety and welfare like aesthetics,[205] but that consideration cannot be unfettered, standardless, or impose requirements that effectively prohibit service or cause unreasonable delay—nor can it be discriminatorily applied to wireless facilities but not others. As one court explained when interpreting Section 332: "[W]hen considering a request to construct a wireless service facility, local zoning authorities may consider factors such as aesthetics and public safety. *Their discretion is not unfettered, however, and '[m]ere generalized concerns … are insufficient to create substantial evidence*.'"[206]

Finally, while a number of parties raise issues regarding the FCC's RF exposure rules and policies,[207] consideration of those issues is beyond the scope of this proceeding. Rather, there is pending proceeding looking at those issues.[208]

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[203] *See* 47 U.S.C. § 332(c)(7)(B)(iii).

[204] *See* 47 U.S.C. § 253(a), (c); 332(c)(7)(B)(i).

[205] *See, e.g.*, IML at 2 (discussing municipal need to consider aesthetics); Louisville at 3 (aesthetics are taken into account when considering reasonable ROW access); Maryland Municipal League at 2 (localities are best suited to understand aesthetics); City of North Port, Florida Comments, WT Dkt. No. 16-421, at 2-3 (Mar. 8, 2017) (municipalities should be able to retain some control over the aesthetics of these facilities).

[206] *U.S. Cellular Corp. v. Bd. of Adjustment of Seminole*, 180 Fed. Appx. 791, 794 (10th Cir. 2006) (emphasis added) (quoting *Preferred Sites, LLC v. Troup County*, 296 F.3d 1210, 1219 (11th Cir. 2002)).

[207] *See, e.g.*, EMF Safety Network and Ecological Options Network Comments, WT Dkt. No. 16-421, at 2-3 (Mar. 7, 2017); Montgomery County, Maryland Supplemental Comments, WT Dkt. No. 16-421, at 3, 28-33 (Mar. 8, 2017); Virginia Joint Commenters at 31.

[208] *See Reassessment of RF Exposure Limits and Policies*, Further Notice of Proposed Rule Making and Notice of Inquiry, 28 FCC Rcd 3498 (2013).

CONCLUSION

By taking the steps described above and in T-Mobile's comments, the Commission can further expedite the deployment of next generation wireless infrastructure needed to give consumers access to superior wireless services nationwide.

Respectfully submitted,

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